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7 Attorneys for Creditor Stanley Caplan

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 In re: ) Case No.: 04-53874-ASW  
12 )  
13 EXCEL INNOVATIONS, INC., ) Chapter 11  
14 )  
15 Debtor. ) DECLARATION OF STANLEY  
16 ) CAPLAN IN SUPPORT OF  
17 ) OBJECTIONS TO FIRST INTERIM  
18 ) APPLICATION FOR  
19 ) COMPENSATION AND  
20 ) REIMBURSEMENT OF EXPENSES  
21 ) BY ATTORNEY FOR DEBTOR  
22 )  
23 ) Date: December 7, 2010  
24 ) Time: 1:15 p.m.  
25 ) Courtroom: 3020  
26 ) Judge: Arthur S. Weissbrodt

21 I, Stanley Caplan, know the following matters to be true of my own,  
22 personal knowledge and, if called as a witness, could and would testify  
23 competently thereto. I submit this Declaration in support of my Objections to  
24 the First Interim Fee Application For Compensation and Reimbursement of  
25 Expenses by Attorney for Debtor (the "Fee Application").  
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1           1. In November 2004, I became the President, Chief Executive Officer,  
2 and Board Director for Excel Innovations, Inc. (the "Debtor"). I remained in  
3 those positions for the next several years. I am the holder of a \$192,000  
4 Administrative Claim arising from my post-petition employment. On or  
5 about June 28, 2010, I filed a Proof of Claim with supporting documentation  
6 that appears on the Claims Register for this case as Claim #15.

7           2. I have reviewed the Fee Application, and based on information  
8 obtained while employed by Debtor, I believe that the law firm of Campeau  
9 Goodsell Smith (the "Applicant") did a significant disservice to the Debtor by  
10 pursuing the District Court patent litigation on a non-contingency fee basis.  
11 In May 2004, the District Court granted a motion for summary judgment  
12 against Debtor, ruling that Debtor did not own the patents at issue. The  
13 District Court subsequently granted terminating sanctions against Debtor  
14 and Ned Hoffman. In addition, the patent litigation firm of Knobbe, Martens,  
15 Olson & Bear LLP ("KMOB") had already attempted, with no success, on four  
16 different occasions to obtain Rule 54 certification. In light of these adverse  
17 rulings, it became clear to me that further litigating the patent case could  
18 only be justified on a contingency-fee basis. I don't have the resources to  
19 further evaluate or investigate the legal invoices submitted with the Fee  
20 Application, but I can see no basis under which work performed by Applicant  
21 was of any value to the estate, much less anything close to the \$483,842 spent  
22 on this litigation.  
23

24           I declare under penalty of perjury that the foregoing is true and correct  
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1 and that this Declaration was executed on December 1, 2010, at San Diego,  
2 California.

3 /s/ Stanley Caplan  
4 Stanley Caplan  
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